



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
On the 5<sup>th</sup> day of November, 2003

Essential air service at

**ELY, NEVADA**

under 49 U.S.C. 41731 *et seq.*

**Docket OST-95-361**

**ORDER REQUESTING PROPOSALS**

**Summary**

By this order, the Department is requesting proposals from carriers interested in providing essential air service at Ely, Nevada, for the two-year period beginning on or about November 1, 2003, with or without subsidy. The order reflects new, streamlined procedures for processing such proposals.

**Background**

By Order 2001-7-14, July 24, 2001, the Department selected Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, to provide subsidized essential air service at Ely, Nevada, through November 30, 2003. Under that order, Scenic operates 6 nonstop round trips a week with 19-seat Twin Otter, DHC-6 aircraft at an annual subsidy rate of \$976,533.

**Request for Proposals**

Under normal procedures when nearing the end of a subsidy rate term, absent any expected interest from carriers other than the incumbent, we negotiate a new subsidy rate with the incumbent and issue an order tentatively reselecting it for a new rate term at the agreed rate, while directing other parties to show cause why we should not finalize our tentative

decision. Other carriers wishing to submit competing proposals are invited to do so in response to the show-cause order. If any such proposals are filed, we process them as a competitive case.

In this instance, however, we expect that other carriers may be interested in providing service at Ely. In order to give the community and ourselves a full array of service/subsidy options for consideration, we have decided to forgo negotiating new rates with Scenic at this time and instead proceed directly to a competitive carrier-selection case by requesting proposals from all interested carriers, including the incumbent.

Carriers interested in filing proposals, with or without subsidy requests, should file them within 30 days of the date of service of this order. At the end of that period, our staff will docket the proposals, thereby making them public, and direct each carrier to serve a copy of its proposal on the civic parties and other applicants. Shortly afterwards, we will provide a summary of the proposals to the community and ask them to submit their final comments. We urge the community to rank its preference for each available option. We will give full consideration to all proposals that are timely filed.<sup>1</sup>

#### **New Procedures**

The preceding paragraph reflects streamlined carrier-selection procedures that we have introduced for the essential air service program generally. In the past, we have accepted *initial* carrier proposals, reviewed them, and then negotiated *final* proposals with each applicant before formally presenting the proposals to the community and asking for their final comments. We had found that a two-step process was generally necessary because, in most cases, the incumbent carrier was the only one interested. As a result, we were unable to rely on competition to discipline carrier subsidy requests, and the community had to wait on a protracted selection process. More recently, however, we have noticed that most orders requesting essential air service have drawn proposals from at least two carriers, and sometimes more. Under the circumstances, we expect that competition among multiple carriers will ensure reasonable subsidy requests, obviate the need for rate negotiations, and allow us to streamline the carrier selection process.

Consequently, interested carriers should prepare their proposals with every expectation that their initial proposals will also be their *final* and *only* proposals.<sup>2</sup> We retain the discretion to further negotiate proposals with carriers when we deem it desirable; in such cases, of course, we will give all applicants the same opportunity. For example, we anticipate that

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<sup>1</sup> In cases where a carrier proposes to provide essential air service without subsidy and we determine that service can be reliably provided without such compensation, we do not proceed with the carrier-selection case. Instead, we simply rely on that carrier's subsidy-free service as proposed.

<sup>2</sup> For this reason, we will allow carriers 30 days to submit their proposals, rather than just 20 as in the past. Also, it is incumbent on each carrier to discuss with the community its preferences before it submits its proposals. Because the new procedures anticipate that a carrier's initial proposal(s) will also be its final proposal(s), we expect to enforce our filing deadlines more stringently than in the past. Carriers should not expect the Department to accept late filings. The additional 10 days will comfortably accommodate the additional time carriers may find necessary to prepare their proposals.

we will continue to negotiate rates in cases where there is only a single interested carrier, as is typically the situation in Alaska. We also retain the discretion to reject outright all unreasonable or unrealistic proposals and resolicit a new round of proposals. However, we anticipate that negotiation or rejection will remain only occasional exceptions to the rule.<sup>3</sup>

We are here providing interested carriers with some basic information to serve as guidance when they prepare their proposals, but we will not prescribe a precise format for their proposals. We expect proposals to adequately describe the service being proposed and the annual amount of subsidy being requested. The applicants can make their own judgments as to the level of detail they wish to present; however, they might want to include proposed schedules as well as supporting data for their subsidy requests, such as projected block hours, revenues and expenses. Carriers' proposals must specify weekly service frequency, completion factor, intermediate stops (if any), aircraft type, and level of annual subsidy. We strongly encourage clear, well-documented proposals that will facilitate their evaluation by the affected community and the Department. We do not anticipate any change in our selection criteria, or in the general provisions governing subsidy payments for essential air service.<sup>4</sup>

With respect to service proposals at Ely, we note that Order 2001-7-14 selected Scenic to provide only 6 round trips a week between Ely and Las Vegas. Ely's civic parties advised us at that time that they preferred this service to more frequent (two round trips a day) service to Salt Lake City with eight-seat aircraft. We encourage proposals that meet the needs of the community in an efficient manner. Carriers are also welcome to propose more than one service option, if they choose, and they need not limit themselves in any way if they envision other, potentially more attractive service possibilities -- different hubs or smaller aircraft, for example -- with subsidy requirements that remain competitive.

### **Service and Traffic History**

Scenic Airlines inaugurated service to Ely in October 2001 in response to our selection, after a service hiatus of several months. During the year ended August 2003, the most recent 12-month period for which traffic data are available, Ely averaged 4.7 passengers per day.<sup>5</sup>

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<sup>3</sup> We request that Scenic, the incumbent, submit a proposal reflecting the service pattern we selected in Order 2001-7-14, that would be in effect beginning November 1, 2003, until further Department action, while we process the carrier-selection case.

<sup>4</sup> In selecting a carrier to provide subsidized essential air service, 49 U.S.C. 41733(c)(1) directs us to consider four factors: (1) service reliability; (2) contractual and marketing arrangements with a larger carrier at the hub; (3) interline arrangements with a larger carrier at the hub; and (4) community views. In addition, we have always given weight to the applicants' relative subsidy requirements. Appendix B contains the general provisions governing essential air service; as in the past, these provisions will be included in the selection order as part of the Department's authorization of subsidy for the selected service.

<sup>5</sup> See Appendix B for historical traffic. Average enplanements per day are based on 313 weekdays and weekends per year.

### **Other Carrier Requirements**

The Department is responsible for implementing various Federal statutes governing lobbying activities, drug-free workplaces, and nondiscrimination.<sup>6</sup> Consequently, all carriers receiving Federal subsidy for essential air service must certify that they are in compliance with Department regulations regarding drug-free workplaces and nondiscrimination, and those carriers whose subsidies exceed \$100,000 over the life of the rate term must also certify that they are in compliance with the regulations governing lobbying activities. Because the Department is prohibited from paying subsidy to carriers that do not submit these documents, all carriers should include and sign these documents when they submit their proposals to the Department, which we will make available upon request. Interested carriers requiring more detailed information regarding these requirements should contact the Office of Aviation Analysis at (202) 366-1053.<sup>7</sup>

### **Community and State Comments**

The community and state are welcome to submit comments at any time. We encourage prospective applicants to contact the community before they submit their proposals because their proposals are final. As noted earlier, we will provide a copy of the proposals to the civic parties and ask them to submit their final comments shortly after the end of the 30-day period for carrier proposals.

This order is issued under authority delegated in 49 CFR 1.56a(f).

### **ACCORDINGLY,**

1. We request that carriers interested in providing essential air service at Ely, Nevada, submit their proposals, with or without subsidy requests, no later than 30 days after the date of service of this order. The proposals should be sent to the EAS & Domestic Analysis Division, X-53, Office of Aviation Analysis, Room 6401, Department of Transportation, 400 7th Street S.W., Washington, DC 20590, with the title "Proposal to Provide Essential Air Service at Ely, Nevada, Docket 361";<sup>8</sup>
2. This docket will remain open until further order of the Department; and

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<sup>6</sup> The regulations applicable to these areas are: (1) 49 CFR Part 20 -- New restrictions on lobbying; (2) 49 CFR Part 21 -- Nondiscrimination in federally-assisted programs of the Department of Transportation -- Effectuation of title VI of the Civil Rights Act of 1964; 49 CFR Part 27 --Nondiscrimination on the basis of disability in programs and activities receiving or benefiting from Federal financial assistance; and 14 CFR Part 382 -- Nondiscrimination on the basis of disability in air travel; and (3) 49 CFR Part 29 -- Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants).

<sup>7</sup> The certifications are also available on the web at <http://ostpxweb.dot.gov/aviation/index.html>.

<sup>8</sup> Questions regarding filings in response to this order may be directed to Dennis DeVany at (202) 366-1053 or Kevin Adams at (202) 366-1047.

3. We will serve copies of this order on the mayor and airport manager of Ely, Nevada, Eagle Canyon Airlines, Inc., d/b/a Scenic Airlines, and the carriers shown in Appendix D.

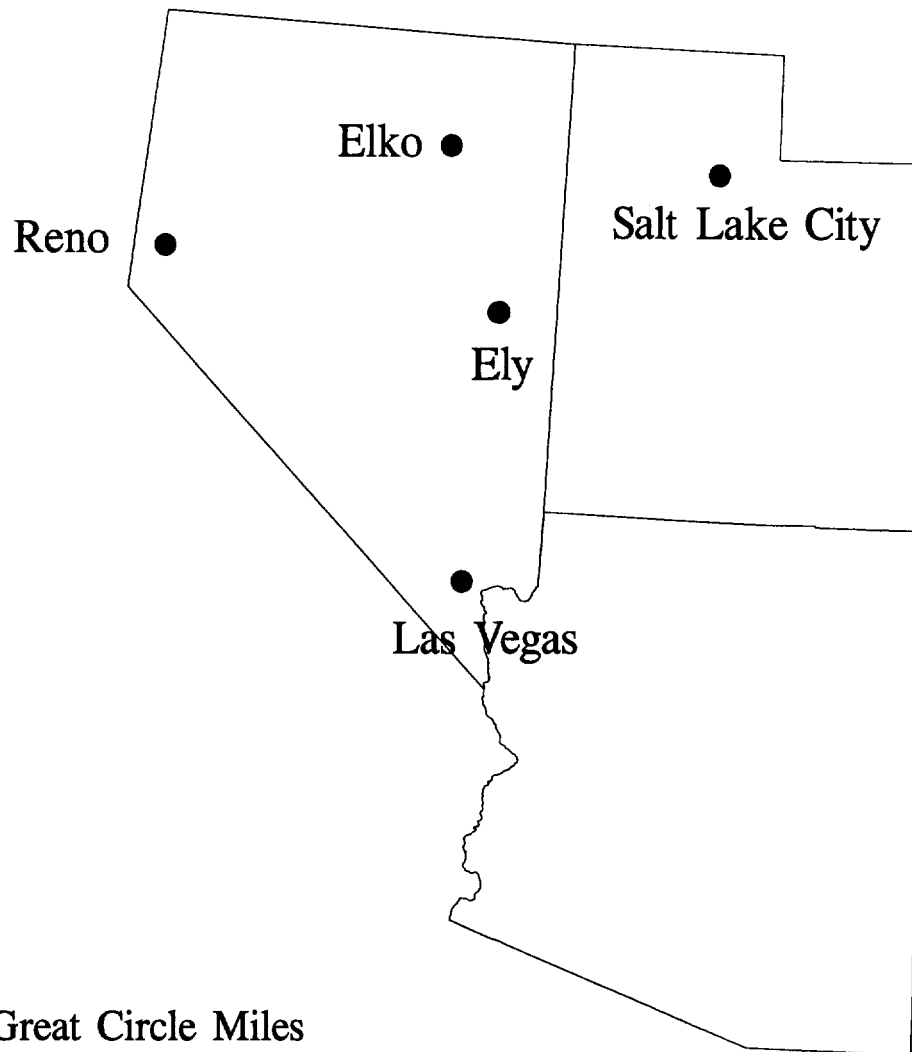
By:

**MICHAEL W. REYNOLDS**  
Acting Assistant Secretary for Aviation  
and International Affairs

(SEAL)

*An electronic version of this document is available  
on the World Wide Web at <http://dms.dot.gov>*

## Appendix A



Great Circle Miles		
Ely	- Elko	116
	- Las Vegas	223
	- Reno	264
	- Salt Lake City	184

Origin and Destination Passengers Between Ely and Las Vegas,  
Nevada, Scenic Airlines

	<u>Monthly &amp; Quarterly</u>	<u>Annual</u>
October-01	21	
November-01	47	
December-01	54	
January-02	53	
<u>February-02</u>	<u>38</u>	
Total	145	
March-02	57	
April-02	57	
<u>May-02</u>	<u>87</u>	
Total	201	
June-02	90	
July-02	105	
<u>August-02</u>	<u>140</u>	
Total	335	749
September-02	93	
October-02	140	
<u>November-02</u>	<u>72</u>	
Total	305	986
December-02	123	
January-03	154	
<u>February-03</u>	<u>109</u>	
Total	386	1,227
March-03	118	
April-03	106	
<u>May-03</u>	<u>142</u>	
Total	366	1,392
June-03	139	
July-03	162	
<u>August-03</u>	<u>116</u>	
Total	417	1,474

General Terms and Conditions for Essential Air Service

The carrier understands that it may forfeit its compensation for any flights that it does not operate in conformance with the terms and stipulations of the rate order, including the service plans outlined in the order and any other significant elements of the required service, without prior approval. The carrier understands that an aircraft take-off and landing at its scheduled destination constitutes a completed flight; absent an explanation supporting subsidy eligibility for a flight that has not been completed, such as certain weather cancellations, only completed flights are considered eligible for subsidy. In addition, if the carrier does not schedule or operate its flights in full conformance with the order for a significant period, it may jeopardize its entire subsidy claim for the period in question. If the carrier contemplates any such changes beyond the scope of the order during the applicable period of these rates, it must first notify the Office of Aviation Analysis in writing and receive written approval from the Department to be ensured of full compensation. Should circumstances warrant, the Department may locate and select a replacement carrier to provide service on these routes. The carrier must complete all flights that can be safely operated; flights that overfly points for lack of traffic will not be compensated. In determining whether subsidy payment for a deviating flight should be adjusted or disallowed, the Department will consider the extent to which the goals of the program are met and the extent of access to the national air transportation system provided to the community.

If the Department unilaterally, either partially or completely, terminates or reduces payments for service or changes service requirements at a specific location provided for under this order, then, at the end of the period for which the Department does make payments in the stipulated amounts or at the stipulated service levels, the carrier may cease to provide service to that specific location without regard to any requirement for notice of such cessation. Those adjustments in the levels of subsidy and/or service that are mutually agreed to in writing by the Department and carrier do not constitute a total or partial reduction or cessation of payment.

Subsidy contracts are subject to, and incorporate by reference, relevant statutes and Department regulations, as they may be amended from time to time. However, any such statutes, regulations, or amendments thereto shall not operate to controvert the foregoing paragraph.

SERVICE LIST FOR THE STATE OF NEVADA

Air Nevada Airlines, Inc.  
Air Vegas, Inc.  
Alpha Air  
Alpine Air Express  
Alpine Aviation, Inc.  
America Aviation  
Amerijet International, Inc.  
Arizona Express Airlines  
Arizona Pacific Airlines, Inc.  
Aviation Services West, Inc.  
Balter Worldwide Corporation  
Barken International, Inc.  
Big Sky Transportation Co.  
Corporate Airlines, Inc.  
Delta Connection  
Direct Air, Inc.  
Empire Airlines, Inc.  
Grand Airways, Inc.  
Grand Canyon Airlines, Inc.  
Gunnell Aviation, Inc.  
Harbor Airlines, Inc.  
Las Vegas Airlines, Inc.  
Martin Aviation, Inc.  
Midwest Express Airlines, Inc.  
Northern Tier Airlines, Inc.  
Patterson Aviation Company  
Redtail Aviation  
Scenic Airlines, Inc.  
Sierra Nevada Airways, Inc.  
SkyWest Airlines, Inc.  
Sun Pacific Airlines, Inc.  
West Air Charter  
Westward Airways, Inc.  
Wings West Airlines, Inc.

Ken Bannon  
Rick Bauer  
Doug Franklin  
E.B. Freeman  
Douglas Gumula  
A. Edward Jenner  
Gene Mallette  
Lee Mason  
Andy Pike  
Larry Tiffin